

## **Assembly Bill No. 1810**

### **CHAPTER 445**

An act to amend Section 17510.2 of the Business and Professions Code, and to amend Sections 12580, 12581, 12587, and 12599 of, and to add Sections 12581.2, 12599.1, and 12599.2 to, the Government Code, relating to charitable fundraising.

[Approved by Governor September 13, 1998. Filed  
with Secretary of State September 14, 1998.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1810, Davis. Charitable fundraising.

Under existing law, the Uniform Supervision of Trustees for Charitable Purposes Act governs charitable corporations and trustees who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers.

The act also requires a commercial fundraiser to register with the Attorney General's Registry of Charitable Trusts and with the sheriff of each county in which the fundraiser intends to solicit funds or the sheriff's designee prior to soliciting any funds or receiving or controlling any funds or assets for charitable purposes, and to file an annual financial report of funds solicited on behalf of each tax-exempt organization or for each charitable purpose.

Under the act, the Attorney General is also authorized to make any additional rules and regulations that may be necessary for the administration of the act.

The bill would rename the act, expand the definitions of solicitation for charitable purposes, sales solicitation for charitable purposes, and commercial fundraiser for charitable purposes, and apply the act's provisions to commercial fundraisers, fundraising counsels, and commercial coventurers. The bill would also require a commercial fundraiser to register with the Attorney General prior to soliciting, receiving, or controlling any assets or property, including salvageable personal property, for charitable purposes, in addition to funds, and to include these assets or property in its annual financial report.

The bill would authorize the Attorney General to assess an annual registration or renewal fee solely for the purpose of operating and maintaining the Attorney General's Registry of Charitable Trusts and to provide public access via the Internet to reports filed with the Attorney General.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17510.2 of the Business and Professions Code is amended to read:

17510.2. (a) As used in this article, “solicitation for charitable purposes,” means any request, plea, entreaty, demand, or invitation, or attempt thereof, to give money or property, in connection with which any of the following applies:

(1) Any appeal is made for charitable purposes.

(2) The name of any charity, philanthropic or charitable organization is used or referred to in any such appeal as an inducement for making any such gift.

(3) Any statement is made to the effect that the gift or any part thereof will go to or be used for any charitable purpose or organization.

(4) The name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any money or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

(b) As used in this article, “sales solicitation for charitable purposes” means the sale of, offer to sell, or attempt to sell any advertisement, advertising space, book, card, chance, coupon device, magazine subscription, membership, merchandise, ticket of admission or any other thing or service in connection with which any of the following applies:

(1) Any appeal is made for charitable purposes.

(2) The name of any charity, philanthropic or charitable organization is used or referred to in any such appeal as an inducement for making any such sale.

(3) Any statement is made to the effect that the whole or any part of the proceeds from the sale will go to or be used for any charitable purpose or organization.

(4) The name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any money or property, unless the only expressed or implied purpose of the sales solicitation is for the sole benefit of the actual active membership of the organization.

(c) A solicitation for charitable purposes, or a sale, offer or attempt to sell for charitable purposes, shall include the making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever any such solicitation.

(d) For purposes of this article, “charity” shall include any person who, or any nonprofit community organization, fraternal,

benevolent, educational, philanthropic, or service organization, or governmental employee organization which, solicits or obtains contributions solicited from the public for charitable purposes or holds any assets for charitable purposes.

SEC. 2. Section 12580 of the Government Code is amended to read:

12580. This article may be cited as the Supervision of Trustees and Fundraisers for Charitable Purposes Act.

SEC. 3. Section 12581 of the Government Code is amended to read:

12581. This article applies to all charitable corporations and trustees holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers, over which the state or the Attorney General has enforcement or supervisory powers. The provisions of this article shall not apply to any committee as defined in Section 82013 which is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9.

SEC. 4. Section 12581.2 is added to the Government Code, to read:

12581.2. As used in this article, “solicitation” or “soliciting” for charitable purposes means any request, plea, entreaty, demand, or invitation, or attempt thereof, to give money or property, in connection with which any of the following applies:

(a) Any appeal is made for charitable purposes.

(b) The name of any charity, philanthropic or charitable organization, is used or referred to in any such appeal as an inducement for making any such gift.

(c) Any statement is made to the effect that the gift or any part thereof will go to or be used for any charitable purpose or organization.

(d) The name of any organization of law enforcement personnel, firefighters or other persons who protect the public safety is used or referred to as an inducement for transferring any money or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

SEC. 5. Section 12587 of the Government Code is amended to read:

12587. The Attorney General may make additional rules and regulations necessary for the administration of this article, provided that any assessment of an annual registration or renewal fee from charitable trustees and corporations, commercial fundraisers, fundraising counsel, and commercial coventurers subject to this article, authorized by statute or regulation, shall be used by the Department of Justice solely to operate and maintain the Attorney

General's Registry of Charitable Trusts and provide public access via the Internet to reports filed with the Attorney General.

SEC. 6. Section 12599 of the Government Code is amended to read:

12599. (a) "Commercial fundraiser for charitable purposes" is defined as any individual, corporation, or other legal entity who for compensation does any of the following:

(1) Solicits funds, assets, or property in this state for charitable purposes.

(2) As a result of a solicitation of funds, assets, or property in this state for charitable purposes, receives or controls the funds, assets, or property solicited for charitable purposes.

(3) Employs, procures, or engages any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

A commercial fundraiser for charitable purposes shall include any person, association of persons, corporation, or other entity that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code.

A commercial fundraiser for charitable purposes shall not include a "trustee" as defined in Section 12582 or 12583, a "charitable corporation" as defined in Section 12582.1, or any employee thereof. A commercial fundraiser for charitable purposes shall not include an individual who is employed by or under the control of a commercial fundraiser for charitable purposes registered with the Attorney General. A commercial fundraiser for charitable purposes shall not include any federally insured financial institution which holds as a depository funds received as a result of a solicitation for charitable purposes.

As used in this section, "charitable purposes" includes any solicitation in which the name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any funds, assets, or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

(b) A commercial fundraiser for charitable purposes shall, prior to soliciting any funds, assets, or property, including salvageable personal property, in California for charitable purposes, or prior to receiving and controlling any funds, assets, or property, including salvageable personal property, as a result of a solicitation in this state for charitable purposes, register with the Attorney General's Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the

commercial fundraiser for charitable purposes does business and shall be effective for one year. A registration or renewal fee of two hundred dollars (\$200) shall be required for registration of a commercial fundraiser for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(c) A commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts, and with the sheriff of each county in which the fundraiser intends to solicit funds or the sheriff's designee, an annual financial report on a form provided by the Attorney General, accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding calendar year. The annual financial report shall be filed with the Attorney General's Registry of Charitable Trusts, and with the sheriff of each county in which a fundraiser intends to solicit funds or the sheriff's designee, no later than 30 days after the close of the preceding calendar year. Nothing in this section shall be construed as requiring the sheriff of any county, or the sheriff's designee, to maintain on file any annual financial report required pursuant to this subdivision.

(d) The contents of the forms for annual registration and annual financial reporting by commercial fundraisers for charitable purposes shall be established by the Attorney General in a manner consistent with the procedures set forth in subdivisions (a) and (b) of Section 12586. The annual financial report shall require a detailed, itemized accounting of funds, assets, or property, solicited for charitable purposes on behalf of each charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or for each charitable purpose during the accounting period, and shall include, among other data, the following information for funds, assets, or property, solicited by the commercial fundraiser for charitable purposes:

- (1) Total revenue.
- (2) The fee or commission charged by the commercial fundraiser for charitable purposes.
- (3) Salaries paid by the commercial fundraiser for charitable purposes to its officers and employees.
- (4) Fundraising expenses.
- (5) Distributions to the identified charitable organization or purpose.
- (6) The names and addresses of any director, officer, or employee of the commercial fundraiser for charitable purposes who is a



director, officer, or employee of any charitable organization listed in the annual financial report.

(e) A commercial fundraiser for charitable purposes that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code shall file with the Attorney General's Registry of Charitable Trusts, and not with the sheriff of any county, an annual financial report on a form provided by the Attorney General that is separate and distinct from forms filed by other commercial fundraisers for charitable purposes pursuant to subdivisions (c) and (d).

(f) It shall be unlawful for any commercial fundraiser for charitable purposes to solicit funds in this state for charitable purposes unless the commercial fundraiser for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article. Failure to comply with these registration or annual renewal and financial reporting requirements shall be grounds for injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(g) A commercial fundraiser for charitable purposes is a constructive trustee for charitable purposes as to all funds collected pursuant to solicitation for charitable purposes and shall account to the Attorney General for all funds. A commercial fundraiser for charitable purposes is subject to the Attorney General's supervision and enforcement over charitable funds and assets to the same extent as a trustee for charitable purposes under this article.

(h) It shall be unlawful for a commercial fundraiser for charitable purposes to not disclose the percentage of total fundraising expenses of the fundraiser upon receiving a written or oral request from a person solicited for a contribution for a charitable purpose. "Percentage of total fundraising expenses," as used in this section, means the ratio of the total expenses of the fundraiser to the total revenue received by the fundraiser for the charitable purpose for which funds are being solicited, as reported on the most recent financial report filed with the Attorney General's Registry of Charitable Trusts. A commercial fundraiser shall disclose this information in writing within five working days from receipt of a request by mail or fax. A commercial fundraiser shall orally disclose this information immediately upon a request made in person or in a telephone conversation and shall follow this response with a written disclosure within five working days. Failure to comply with the requirements of this subdivision shall be grounds for an injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(i) If the Attorney General issues a report to the public containing information obtained from registration forms or financial report



forms filed by commercial fundraisers for charitable purposes, there shall be a separate section concerning commercial fundraisers for charitable purposes that obtain a majority of their inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code. The report shall include an explanation of the distinctions between these thrift store operations and other types of commercial fundraising.

(j) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 7. Section 12599.1 is added to the Government Code, to read:

12599.1. (a) “Fundraising counsel for charitable purposes” is defined as any person who is described by all of the following:

(1) For compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets or property for charitable purposes.

(2) Does not solicit funds, assets, or property for charitable purposes.

(3) Does not receive or control funds, assets, or property solicited for charitable purposes in this state.

(4) Does not employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(b) “Fundraising counsel for charitable purposes” does not include any of the following:

(1) An attorney, investment counselor, or banker who in the conduct of that person’s profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

(2) A trustee as defined in Section 12582 or 12583.

(3) A charitable corporation as defined in Section 12582.1, or any employee thereof.

(4) A person employed by or under the control of a fundraising counsel for charitable purposes, as defined in subdivision (a).

(5) A person, corporation, or other legal entity, engaged as an independent contractor directly by a trustee or a charitable corporation, that prints, reproduces, or distributes written materials prepared by a trustee, a charitable corporation, or any employee thereof, or that performs artistic or graphic services with respect to written materials prepared by a trustee, a charitable corporation, or any employee thereof, provided that the independent contractor does not perform any of the activities described in paragraph (1) of subdivision (a).

(6) A person whose total annual gross compensation for performing any activity described in paragraph (1) of subdivision (a) does not exceed twenty-five thousand dollars (\$25,000).

(c) A fundraising counsel for charitable purposes shall, prior to managing, advising, counseling, consulting, or preparing material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, register with the Attorney General's Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the fundraising counsel for charitable purposes does business and shall be effective for one year.

A registration or renewal fee of two hundred dollars (\$200) shall be required for registration of a fundraising counsel for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration and renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(d) A fundraising counsel for charitable purposes shall file annually with the Attorney General's Registry of Charitable Trusts on a form provided by the Attorney General, a report listing each person, corporation, or other legal entity for whom the fundraising counsel has performed any services described in paragraph (1) of subdivision (a), and a statement certifying that the fundraising counsel had a written contract with each listed person, corporation, or other legal entity that contained the following provisions:

(1) The legal name and address of the person, corporation, or other legal entity as registered with the Attorney General pursuant to this article, or if the person, corporation, or other legal entity is not registered with the Attorney General, the legal name and address of the person, corporation, or other legal entity as registered with the Secretary of State.

(2) A statement of the respective obligations of the fundraising counsel and the person, corporation, or other legal entity.

(3) A clear statement of the fees and any other form of compensation, including commissions or property, that will be paid to the fundraising counsel.

(4) The effective and termination dates of the contract and the date services will commence with respect to solicitation in this state of funds, assets, or property for charitable purposes.

(5) A statement that the person, corporation, or other legal entity exercises control and approval over the content and volume or any solicitation for charitable purposes.



(6) A statement that the fundraising counsel will not at any time solicit funds, assets, or property for charitable purposes, receive or control funds, assets, or property solicited for charitable purposes, or employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(7) The signature of an authorized officer or director of the person, corporation, or other legal entity and the signature of the authorized contracting officer of the fundraising counsel.

(e) It shall be unlawful for any fundraising counsel for charitable purposes to manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes unless the fundraising counsel for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article.

(f) A fundraising counsel for charitable purposes is subject to the Attorney General's supervision and enforcement to the same extent as a trustee for charitable purposes under this article.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 8. Section 12599.2 is added to the Government Code, to read:

12599.2. (a) "Commercial coventurer" is defined as any person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds, assets, or property for charitable organizations or charitable purposes, and who represents to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit a charitable organization or will be used for a charitable purpose.

(b) A commercial coventurer is a trustee as defined in Section 12582. Notwithstanding the requirements of Sections 12585 and 12586, a commercial coventurer is not required to register or file periodic reports with the Attorney General provided that the commercial coventurer:

(1) Has a written contract with a trustee or charitable corporation subject to this article, signed by two officers of the trustee or charitable corporation, prior to representing to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit the trustee or charitable corporation or will be used for a charitable purpose.

(2) Within 90 days after commencement of those representations, and at the end of each successive 90-day period during which the representations are made, transfers to that trustee or charitable corporation subject to this article all funds, assets, or property received as a result of the representations.

(3) Provides in conjunction with each transfer required by paragraph (2) a written accounting to the trustee or charitable corporation subject to this article of all funds, assets, or property received sufficient to enable the trustee or charitable corporation (A) to determine that representations made to the public on its behalf have been adhered to accurately and completely, and (B) to prepare its periodic report filed with the Attorney General pursuant to Section 12586.

(c) A commercial coventurer that does not meet the requirements of paragraphs (1), (2), and (3) of subdivision (b) shall register and report to the Attorney General on forms required by the Attorney General. An annual registration or renewal fee of two hundred dollars (\$200) shall be required for registration or renewal of registration of a commercial coventurer, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section.

